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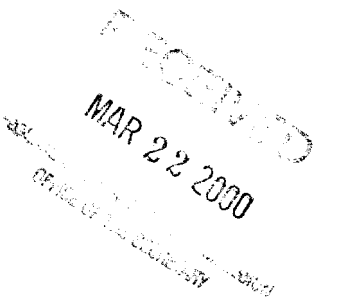
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions of the	)	
Telecommunications Act of 1996	)	



COMMENTS AND OPPOSITION OF GTE

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Summary

The *UNE Remand Order* requires ILECs to make available, on a nationwide basis, unbundled access to a multitude of network elements. In a few minor respects, the *Order* relaxes pre-existing unbundling obligations or refrains from imposing new ones. At bottom, however, the *Order* adds a myriad of new unbundling requirements, some of which already have taken effect and some of which will become effective in May, 2000.

The reconsideration petitions address virtually every aspect of the *UNE Remand Order*. GTE supports two of the petitions – from BellSouth and Bell Atlantic – which ask for targeted clarifications or modifications of certain requirements regarding access to inside wire and portions of the loop. First, GTE agrees with BellSouth that the Commission should reconsider the new definition of inside wire. This definition (1) is inconsistent with past Commission decisions, (2) would cause disputes between carriers and building owners, and (3) would require ILECs to reclassify facilities. Alternatively, using the definition of intrabuilding cable in 47 C.F.R. § 32.2426 would avoid these difficulties while still providing CLECs with the same access to subloop elements. Second, as Bell Atlantic requests, the Commission should reconsider its requirement that ILECs construct a single point of interconnection ("SPOI") for use by multiple carriers. Such a requirement creates new subloop elements that would not otherwise exist and is inconsistent with the 1996 Act. However, if the Commission nonetheless requires ILECs to build a SPOI, the Commission should clarify that ILECs are not required to build a SPOI where the customer is served by a CLEC and the ILEC has no facilities at or near the customer's premises.

In contrast, GTE opposes the relief sought by the IXCs and CLECs. Granting their petitions would unlawfully expand the already burdensome obligations imposed by the *UNE Remand Order* and create powerful disincentives to facilities-based competition and the deployment of advanced services. In particular:

- The Commission should deny requests to absolve CLECs of responsibility to pay for the costs of conditioning lines. Recovering those costs from the cost causers is fully consistent with TELRIC principles and required by the Act.

- The Commission should not curtail the already minimal exemption from the requirement to provide unbundled circuit switching. Proponents of increasing the line threshold for the exemption to the equivalent of a DS1 circuit offer no new arguments and fail to show that CLECs would be materially impaired by the current, four-line cut-off.

- The Commission should not disturb its finding that operator services and directory assistance are competitively available and thus need not be unbundled where the ILEC offers customized routing. Requests for reversal or modification of this holding are contrary to massive record evidence demonstrating a lack of impairment; the proponents of retaining OS/DA as a UNE are simply looking for an unjustified price break.

- The Commission should affirm its holding that ILECs need not provide unbundled access to packet switching in most instances. The Act gives the Commission discretion to consider the impact of its decision on the deployment of new technologies, and there is ample evidence in the record to support a finding of no impairment as to both packet switching and connectivity between data ports.

- The Commission should decline to "clarify" that ILECs must make UNE combinations available everywhere and for any purpose if they are available anywhere. The *UNE Remand Order* correctly recognized that such requests are governed by Rule 51.315(c), which is currently before the Eighth Circuit, rather than by Rule 51.315(b), which was reinstated by the Supreme Court.

- The Commission should deny MCI WorldCom's request for access to expanded subloop information. As the *Order* notes, the Act does not require ILECs to perform a plant inventory and construct new databases for the benefit of CLECs, where ILECs do not collect such information for themselves.

- The Commission should reject Low Tech Design's request for unbundled, unmediated access to AIN triggers and mandatory interconnection of third-party Service Control Points ("SCPs") and Intelligent Peripherals ("IPs"). Such access and interconnection continue to raise serious technical feasibility and network reliability concerns.

GTE respectfully suggests that action consistent with these recommendations will help achieve the Act's goals of promoting economically rational local exchange competition and stimulating the deployment of advanced telecommunications capabilities.

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GTE Service Corporation and its affiliated domestic communications companies[1] ("GTE") respectfully submit their response to the petitions for reconsideration of the Commission's *UNE Remand Order*.[2] For the reasons discussed herein, GTE supports the requests of Bell Atlantic and BellSouth to modify certain aspects of that *Order* in order better to reflect agency and judicial precedent and marketplace realities. GTE opposes, however, the efforts by several IXCs and CLECs to have the Commission grossly expand the *Order*'s already burdensome requirements. Those petitions, if

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[1] GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc.

[2] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order, FCC 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*"). Public notice of the petitions for reconsideration appeared at 65 Fed. Reg. 12004 (Mar. 7, 2000). MCI WorldCom filed two petitions, one styled a petition for reconsideration and one styled a petition for clarification, in a blatant effort to evade the page limits established in 47 C.F.R. § 1.429. GTE responds to MCI WorldCom's arguments notwithstanding this procedural gamesmanship, citing to the reconsideration petition as "MCI Recon. Petition" and the clarification petition as "MCI Clarif. Petition."

granted, would impair economically rational local exchange competition and deter the deployment of advanced technologies and services by ILECs and CLECs alike.

I. BELL ATLANTIC AND BELLSOUTH DEMONSTRATE THE NEED FOR MODIFICATION OF CERTAIN UNBUNDLING RULES.

A. The Commission's New Definition of Inside Wire Is Overbroad and Inconsistent with Longstanding Precedent.

In the *UNE Remand Order*, the Commission adopted the following definition of inside wire:

> *Inside Wire*. Inside wire is defined as all loop plant owned by the incumbent LEC on end-user customer premises as far as the point of demarcation as defined in § 68.3, including the loop plant near the end-user customer premises. Carriers may access the inside wire subloop at any technically feasible point including, but not limited to, the network interface device, the minimum point of entry, the single point of interconnection, the pedestal, or the pole.[3]

However, prior to this Order, the Commission had consistently defined inside wire as "all facilities located on the customer's side of the demarcation point required to transmit telecommunications services over a wireline network."[4] By changing this definition, the Commission now expands the definition of inside wire to include wire on the carrier's side of the demarcation point. In its Petition, BellSouth asks that the Commission

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[3] *UNE Remand Order*, Appendix C at 6-7 (Rule 51.319(a)(2)(A)) (emphasis in original).

[4] *Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association*, 12 FCC Rcd 11897, 11899 (1997).

reconsider this new definition and instead rely on the definition of intrabuilding cable in Section 32.2426 of the Rules.[5] GTE supports BellSouth's request.

The expanded definition of inside wire could cause several unintended problems. First, the new definition will lead to confusion between building owners and carriers regarding ownership of facilities and equipment.[6] Second, ILECs will be required to reclassify facilities on the carrier's side of the demarcation point as inside wire, necessitating significant changes to accounts for no reason.[7]

To avoid these results, the Commission should use its existing definition of "intrabuilding network cable," which includes the facilities in the Commission's "new" definition of inside wire. Section 32.2426 defines intrabuilding network cable as "cable and wires located on the company's side of the demarcation point or standard network interface inside subscribers' buildings or between buildings on one customer's same premises."[8] This definition would maintain the differentiation between ILEC facilities on the carrier's side of the demarcation point – intrabuilding cable – and customer-owned facilities on the customer's side of the demarcation point – inside wire. The Commission's existing Rule should be replaced with the following:

> *Intrabuilding cable*. All intrabuilding cable as defined in § 32.2436 that is owned by the incumbent LEC up to the

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[5] BellSouth Petition at 3. Unless otherwise noted, all Petitions cited to herein were filed in CC Docket No. 96-98 on February 17, 2000.

[6] BellSouth Petition at 3.

[7] BellSouth Petition at 3.

[8] 47 C.F.R. § 32.2426.

> point of demarcation as defined in § 68.3, including the loop plant near the end-user customer premises, must be made available as a subloop unbundled network element. Carriers may access the inside wire subloop at any technically feasible point including, but not limited to, the network interface device, the minimum point of entry, the single point of interconnection, the pedestal, or the pole.

GTE's proposed language would provide the same access to subloop unbundled network elements as the Commission's new Rule, without creating confusion as to ownership of facilities or requiring reclassification of ILEC assets.[9]

B. Requiring ILECs To Construct a Single Point of Interconnection ("SPOI") Is Inconsistent with the 1996 Act.

In its *UNE Remand Order*, the Commission requires "the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers."[10] Bell Atlantic has asked the Commission to reconsider this requirement because it "would force incumbent carriers to create subloop elements where they do not exist and the 1996 Act does not require incumbent carriers to do so."[11] The Commission should grant Bell Atlantic's request.

The 1996 Act requires ILECs to give CLECs access to ILECs' network elements. As confirmed by the Eighth Circuit, Section 251's requirements are limited to ILECs'

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[9] Notwithstanding its proposed language change, GTE believes that unbundled access to subloops is not properly required under Sections 251(c)(3) and 252(d)(2) of the Act. GTE reserves its right to challenge the Commission's determination on that issue.

[10] *UNE Remand Order*, ¶ 226.

[11] Bell Atlantic Petition at 14.

"existing network – not to a yet unbuilt superior one."[12] Requiring ILECs to build a SPOI solely to create additional subloop elements where none would otherwise exist is inconsistent with this determination. With the SPOI, the ILEC would be creating new elements and giving the CLEC access to the network which the ILEC itself does not have.

In addition, as Bell Atlantic notes, requiring ILECs to build a SPOI is inconsistent with the Commission's decision that ILECs are not required to build additional space at "accessible terminals."[13] In the *UNE Remand Order*, the Commission concluded that "[o]ur rules do not require incumbents to build additional space."[14] GTE believes that this conclusion comports with the Act's requirement that CLECs be given access to the ILEC network, but are not entitled to better quality than the ILEC enjoys.

C. At a Minimum, the Commission Should Clarify that the First Carrier Connecting to a Building's Inside Wiring is Required To Construct the SPOI.

If, despite its inconsistency with the Act, the Commission nonetheless mandates that the ILEC must construct a SPOI, the Commission should clarify that this requirement is not applicable in cases where the ILEC does not own any facilities. In footnote 442 of the *UNE Remand Order*, the Commission states that the "incumbent is obligated to construct the single point of interconnection whether or not it controls the

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[12] *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 813 (1999).

[13] Bell Atlantic Petition at 14-15.

[14] *UNE Remand Order*, ¶ 221.

wiring on the customer premises."[15] As BellSouth explains, "[t]he Commission's order could be interpreted to require an incumbent to construct a SPOI in locations where it owns no facilities rather than just where it does not control the wiring on the customer's premises, but does control distribution facilities providing service to the customer."[16] The Commission should clarify that this is not the result it intended.

By the wording in that footnote, the Commission seems to be assuming that the ILEC will be the only telecommunications carrier connecting to the inside wire on the building owner's side of the demarcation point. As competition increases, particularly for businesses and multi-dwelling units, a CLEC is now often the first telecommunications service provider connecting to a building's inside wire. Such situations are becoming increasingly common in GTE's service areas. For example, in GTE's service area in Texas, OpTel, Inc. has 17 multi-tenant apartment properties in which it owns the intrabuilding wiring, and SBC's CLEC serves two multi-tenant business buildings and one multi-tenant apartment building in which it owns the intrabuilding wiring. When tenants have requested service from GTE, GTE is forced to use the CLEC's intrabuilding wiring. This situation has also arisen in Indiana, where E.COM is the exclusive facilities-based provider of telecommunications service in a new development, and GTE has no facilities near the development.

When a CLEC is the first carrier connecting its facilities to a building's inside wire, it should be that CLEC's responsibility to provide a SPOI for other carriers –

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[15] *UNE Remand Order*, ¶ 226 n.442.

[16] BellSouth Petition at 5.

whether the ILEC or another CLEC – that need access to the building's inside wire. Without this clarification, the Commission's wording is open to the interpretation that, even where a CLEC is the first carrier to connect to a building's inside wire, the ILEC must reconfigure the *CLEC's facilities* in order to build a SPOI so that *another CLEC* can connect to a building's inside wire. The Commission cannot have intended for ILECs to serve as construction companies for CLECs, and the Act does not require them to do so.

II. REQUESTS TO EXPAND THE UNBUNDLING REQUIREMENTS ARE CONTRARY TO THE LAW AND SOUND PUBLIC POLICY.

Various CLECs and IXCs seek to make virtually every requirement of the *UNE Remand Order* more intrusive and expansive. These requests ignore the limits set by the Act and, if granted, would undermine economically rational competition.

A. The Commission Should Not Exempt CLECs from Bearing the Cost of Requested Loop Conditioning.

In the 1996 *Local Competition Order*, the Commission required ILECs "to take affirmative steps to condition existing loop facilities" upon request, but concomitantly mandated that the "requesting carrier would ... bear the cost of compensating the incumbent LEC for such conditioning."[17] The *UNE Remand Order* rejected the argument of some CLECs that ILECs should not be able to charge for conditioning

[17] *Implementing the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15692 (1996) (¶ 382).

loops of less than 18,000 feet, correctly explaining that "devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them."[18]

Several petitioners seek to force ILECs to bear the costs of loop conditioning, even though those costs are caused by the requesting CLECs. Their arguments are entirely without merit.[19]

First, the claim that recovery of loop conditioning costs is inconsistent with TELRIC is procedurally defective.[20] The CLECs' petitions are grossly untimely because the obligation of CLECs to pay for loop conditioning has been in place for almost four years. The only new decision made in the *UNE Remand Order* was to decline requests that the payment obligation be forgiven for loops shorter than 18,000 feet.

In addition, aside from its fatal procedural infirmities, this claim is simply wrong. Contrary to the CLECs' arguments, proper application of TELRIC does not require an inquiry into whether a hypothetically designed network of the future, which will never exist, would require line conditioning to support advanced services. Rather, recovery of line conditioning costs is consistent with TELRIC as long as forward-looking principles

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[18] *UNE Remand Order*, ¶ 193.

[19] On another loop-related matter, AT&T (at 2-5) and MCI Clarif. Petition (at 10-11) argue that ILECs must take actions necessary to enable CLECs to provide xDSL over UNE-P arrangements. GTE responds to these arguments in its Comments on the Petitions to Reconsideration of the Commission's Line Sharing Order, also being filed today, and incorporates those comments herein by reference.

[20] *See* @Link Petition at 3-5, MCI Recon. Petition at 15-17, Sprint Petition at 3-7, Rhythms/Covad Petition at 3-5.

are used in determining those costs.[21] Moreover, even if the design of the network were relevant, the CLECs are wrong to suggest that a forward-looking network would never need conditioning. Distance limitations would still apply, as would the need to condition lines served through forward-looking, technologically efficient DLC architectures.

There is likewise no basis for the more limited claim that conditioning costs should not be imposed where loops are less than 18,000 feet.[22] Conditioning costs are legitimately incurred on shorter loops where DLC technology is used or where older, but still functional loops, are in place based on pre-SAI design criteria.

The Commission also should reject requests to prohibit the recovery of line conditioning charges on a non-recurring basis.[23] This argument is once again procedurally improper, because the Commission's Rule on recovery of non-recurring costs (Rule 51.507(e)) has been in place since 1996 and was not modified in the *UNE Remand Order*. In any event, the Commission should not alter this Rule now. The Rule already gives state commissions the flexibility to allow recovery of non-recurring costs through recurring charges where reasonable, and ILECs should not be forced as

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[21] Allegations that ILECs are recovering "embedded" costs, or are being doubly compensated because forward-looking UNE loop rates already recover conditioning costs, are therefore baseless. Similarly, McLeod's contention (at 4-8) that ILECs should not impose additional charges when a CLEC obtains an unbundled IDLC loop is without merit. That technology was efficient when it was deployed, and ILECs incur real costs in conditioning IDLC loops at a CLEC's request.

[22] *See* @Link Petition at 5, MCI Recon. Petition at 17, Rhythms/Covad Petition at 5-6.

[23] @Link Petition at 6, Rhythms/Covad Petition at 5-6.

a general matter to bear the risk that a CLEC may discontinue service before amortized non-recurring costs have been fully recovered.

Nor is there any basis for Sprint's claim that ILECs must calculate conditioning charges based on the assumption that ILEC technicians will remove at least 25 load coils at a time.[24] Load coils, bridge taps, and other devices on the loop serve the important purpose of assuring high quality voice service. GTE therefore does not routinely eliminate load coils in bulk; rather, it removes these devices only from loops for which conditioning has been requested.

The fact remains that ILECs incur real costs in satisfying CLECs' requests to condition loops, and that they do not recover those costs through existing retail or wholesale rates. Consistent with Commission's longstanding principle that costs should be borne by the cost causer, CLECs must continue to pay ILECs for all costs reasonably incurred in conditioning loops.

B. The Commission Should Not Curtail the Already Minimal Exemption from the Requirement To Provide Unbundled Circuit Switching.

Under the *UNE Remand Order*, ILECs must unbundle circuit switching unless the requesting carrier serves an end user with four or more voice grade-equivalent lines, the ILEC's switch is in density zone 1 within one of the top 50 MSAs, and the enhanced extended link ("EEL") is available throughout density zone 1.[25] This

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[24] Sprint Petition at 6-7.

[25] Rule 51.319(c)(1)(B); *UNE Remand Order*, ¶ 298.